



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-44/56210

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 27, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Outagamie County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on January 27, 2003, at Appleton, Wisconsin.

The issue for determination is whether an institutionalized individual is eligible for a deduction from his cost of care for the monthly health insurance premium for a policy on which he is not the owner and not billed for the premium.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

*Petitioner:*

(petitioner)

*Respondent:*

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, P.O. Box 309  
Madison, WI 53707-0309

By: Barb Spaude, ESS  
Outagamie County Dept Of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Kenneth P. Adler  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Outagamie County.
2. Petitioner is eligible for institutional MA under the spousal impoverishment provisions at Wis. Stat. 49.455. Petitioner's spouse resides in the community.
3. Petitioner's community spouse is employed and does not receive a Community Spouse Income Allocation from petitioner as her gross monthly income exceeds the Community Spouse

Maximum Income Allocation of \$1,990 and meets her needs in the community without assistance from petitioner. Exhibit 6

4. Petitioner's community spouse has health insurance coverage for herself and petitioner through her employer. This private health insurance coverage pays for all petitioner's health-related expenses *outside* the institution – such as hospitalizations. The private insurance does *not* pay for the cost of the institution so that cost is paid by the MA program as the payor of last resort.
5. The health insurance is not owned by petitioner, nor is he billed for the premiums.
6. Petitioner's community spouse pays a yearly premium of \$2,163.20 (approximately \$180/month). This amount includes coverage for both petitioner and his community spouse. The premium for the community spouse alone is \$972.92 (approximately \$81/month). Exhibits 2, 3
7. Petitioner has gross income of \$1,488 per month. From this amount two deductions were previously made: (1) a personal needs allowance of \$45, and (2) a health insurance premium payment of \$98.43. Using these deductions, he was previously assigned a patient liability of \$1,344.57. Exhibit 5
8. In December 2002 it was determined that the county agency had been incorrectly deducting the health insurance premium in calculating petitioner's cost of care. When the agency removed the health insurance premium deduction from petitioner's monthly income, his cost of care was increased to \$1,443 per month. Exhibit 5
9. On December 9, 2002 the county agency issued a notice of decision informing petitioner his cost of care would be increased due to the fact he would no longer be receiving a deduction for the cost of health insurance owned by his community spouse.

### **DISCUSSION**

The law is clear that *all* income of an MA recipient who resides in an institution must be applied to the cost of the institution. Wis. Stat. § 49.45(7)(a) (1999-00); Wis. Admin. Code § 103.07(1)(d) (November 2000). From this income amount, certain deductions are allowed. Those deductions are: **(1)** monthly \$45.00 personal allowance (the monthly personal needs allowance was \$40.00 but was increased to \$45.00 effective July 1, 2001), **(2)** the first \$65.00 of earnings (and one-half the remainder of gross earnings) if the person is employed, **(3)** the cost of health insurance for the person, **(4)** the cost of necessary medical or remedial care for the person not covered by MA, **(5)** the actual amount paid by the person for support of someone for whom the person is legally responsible, and **(6)** the monthly cost of maintaining a home owned by the person if the person is expected to return home (as verified by a physician). Wis. Admin. Code § HFS 103.07(1)(d); Wis. Stat. 49.45(7)(a) (1999-00); MA Handbook, Appendix. 10.5.0.

A further explanation of what cost of health insurance can be deducted under (3) above is provided at MA Handbook, at Appendix 10.5.1, which states:

Allow health insurance costs only if the primary person is the owner of the policy and is the individual billed for the premium.

Petitioner's community spouse explains that she is penalized if she does not receive credit for the \$98.43/month she pays for petitioner's portion of her health insurance. Technically, the community spouse previously received a credit for the amount she paid for petitioner's insurance because the monthly bill as reduced by \$98.43. The community spouse asserted at hearing she would terminate coverage for petitioner if she does not receive credit for that premium payment. The community spouse explained the current insurance covers most of petitioner's health care costs, except the monthly nursing home bill. Therefore, if she terminates petitioner from coverage under her health insurance plan, the state will have

likely have to pay more for petitioner's care than the \$98.43 for which the state will not provide a credit to the community spouse.

The county agency references the above MA Handbook provision and asserts it cannot credit petitioner's cost of care for a health insurance premium on coverage which he does not own and which he is not billed for. While the county agency does not dispute the termination of petitioner's health care coverage under his wife's policy will ultimately increase the cost to the Medical Assistance program, the agency explains the policy is clear.

Based upon the above, I must conclude petitioner is not eligible for a deduction for health care premiums for a policy for which he is not the owner and is not the person billed for the coverage. Petitioner's community spouse may be correct that such a determination will result in additional charges to the Medical Assistance program if she terminates petitioner from her health insurance coverage. However, administrative law judges do not have the authority to bypass clearly stated law and policy.

### **CONCLUSIONS OF LAW**

1. That petitioner is not entitled to a deduction from his cost of care for the payment of a health insurance premium for a policy on which he is not the owner and for which he is not billed for coverage.
2. That petitioner's cost of care was correctly increased.

**NOW, THEREFORE, it is ORDERED**

*That the petition for review herein be and the same is hereby dismissed.*

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 11th day of  
March, 2003

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/sKenneth P. Adler  
Administrative Law Judge  
Division of Hearings and Appeals  
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